

CLAIMS OF CERTAIN OFFICERS AND CREWS, ETC., OF THE NAVY.

FEBRUARY 12, 1895.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3140.]

The Committee on War Claims, to whom was referred the bill (H. R. 3140) to provide for the settlement of claims of officers and crews of the Navy to certain moieties, etc., have had the same under consideration, and report as follows:

It appears that during the late war certain quantities of broken cotton bales were picked up in the sea by our blockading vessels, which had evidently been thrown overboard from some English blockade runner escaping from a Southern port, and which were uniformly sent into port to be sold for the benefit of the salvors. At first it was the practice for the United States marshal to libel this cotton, and upon the presentation of affidavits of officers as to the time, place, and circumstances attending the finding of the derelict, by the United States district attorney, the court (in the absence of counsel for the salvors as to their rights) signed decrees, declaring that the "*derelict broken cotton bales*" were of "*inferior force to the captors*" (a prerequisite under the law to such a decree), and decreed it therefore to be "*prize of war*," and directed that one moiety of the proceeds of the sale of such cotton should be paid into the United States Treasury.

Subsequently the officers, being advised of the rulings of the court, employed counsel to protect their interests, and after full argument the court afterwards decided in other cases, on the same facts and circumstances, that such cotton was not prize of war, but was simply "*derelict*," and that the salvors were entitled to the whole proceeds of the cotton sold, reference being made to the decision of Justice Betts, United States district court for the southern district of New York, in the cases of *United States v. Forty Bales of Cotton*, *United States v. Thirty-four and one-half Bales of Cotton*, *United States v. One hundred and fifty Sacks and Fifteen Bundles Picked Out by the Gunboats Gettysburg, Quaker City, and Nippon*.

In consequence of these decisions the accounting officer of the Treasury distributed the whole proceeds to the salvors, as directed by the court, whereas prior thereto only one-half was paid to them and the other half covered into the Treasury. The officers who were affected by the first decision of the court being at sea on blockading duty, and unable to leave until it was too late to have their interests protected by appeal to the proper appellate tribunal, presented their claims for

the other moiety to the accounting officer of the Treasury, and in the leading test cases (that of the officers and crew of the United States steamer *Vicksburg*) Hon. Second Comptroller Brodhead decided as follows:

Where seventy-eight bales of cotton were picked up at sea by the United States steamer *Vicksburg*, and the court (in Boston) decreed that one-half of the proceeds of the cotton should go to the salvors and the other half be paid into the United States Treasury, and subsequently one of the salvors applied for his proportion of the moiety paid into the Treasury, on the ground that the cotton was "derelict" and belonged wholly to the salvors: *Held*, that under section 11 of the act of June 30, 1864 (13 Stat. L., 10), relative to the distribution of ransom money, salvage, etc., it was competent for the Secretary of the Navy to correct the mistake of the court, and to direct payment to the salvors of the moiety erroneously paid into the Treasury, provided it was carried to the credit of the appropriation subject to draft; but that if the money was covered in as "miscellaneous receipts," an act of Congress would be requisite to authorize the payment to the salvors. (April 29, 1870, vol. 33, p. 108, Comptroller's Decisions.)

It appears that this moiety of the proceeds of the sale of derelict cotton had been covered into the Treasury under "miscellaneous receipts," and under the above decision it could only be recovered by Congressional action, which was applied for in the Congress; and in answer to a communication from Hon. A. C. Harmer, of the House Committee on Naval Affairs, relative thereto, Hon. W. E. Chandler, Secretary of the Navy, under date of March 24, 1884, wrote as follows:

* * * "And so as to the advisability of a suitable bill granting them the relief prayed for I have the honor to state, inasmuch as the legal rights of the parties concerned have been passed upon by a court of competent jurisdiction, acting, it may be presumed, upon the facts in evidence before it, and as the case can not now be carried up on appeal for the purpose of having the action of the court below reviewed by the proper appellate court, and for the further reason that it appears that in several other cases where cotton was picked up at sea under like circumstances it was held in the southern district of New York that such cotton was *derelict and not prize*, and decrees awarding the entire proceeds to the finders were entered accordingly, the Department respectfully suggests, for the consideration of the Committee on Naval Affairs, the propriety of such legislation by Congress as will enable the Court of Claims to take cognizance of the claim in question.

Very respectfully,

WM. E. CHANDLER,
Secretary of the Navy.

Your committee, in view of the foregoing statement of facts, report back the bill and recommend its passage.

The committee attach hereto the acts of Congress relating to prize and prize money, derelict property, and the acts as construed by the courts, and ask that it be printed as an appendix of this report.

APPENDIX.

PRIZE AND PRIZE MONEY, LAW OF PRIZE, ACTS OF CONGRESS RELATING TO.

LAW OF PRIZE.

[12 Stat. L., p. 319.]

AN ACT to confiscate property used for insurrectionary purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, during the present or any future insurrection against the Government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employé, shall

purchase or acquire, sell or give, any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned.

SEC. 2. *And be it further enacted*, That such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted.

SEC. 3. *And be it further enacted*, That the Attorney-General, or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

SEC. 4. *And be it further enacted*, That whenever hereafter, during the present insurrection against the Government of the United States, any person claimed to be held to labor or service under the law of any State, shall be required or permitted by the person to whom such labor or service is claimed to be due, or by the lawful agent of such person, to take up arms against the United States, or shall be required or permitted by the person to whom such labor or service is claimed to be due, or his lawful agent, to work or to be employed in or upon any fort, navy-yard, dock, armory, ship, entrenchment, or in any military or naval service whatsoever, against the Government and lawful authority of the United States, then, and in every such case, the person to whom such labor or service is claimed to be due shall forfeit his claim to such labor, any law of the State or of the United States to the contrary notwithstanding. And whenever thereafter the person claiming such labor or service shall seek to enforce his claim, it shall be a full and sufficient answer to such claim that the person whose service or labor is claimed had been employed in hostile service against the Government of the United States, contrary to the provisions of this act.

Approved, August 6, 1861.

[12 Stat. L., p. 374.]

AN ACT to facilitate judicial proceedings in adjudications upon captured property, and for the better administration of the law of prize.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any property captured as prize shall be brought into any district of the United States for adjudication, it shall be the duty of the prize commissioners for such district forthwith to receive, seal, and safely keep the same, until process shall be issued out of the court, under which the same shall be placed in the custody of the marshal of such district. It shall be the further duty of said prize commissioners, at the time of taking such possession, and from time to time pending the adjudication, to examine into the condition of said property, and report to the court if the same, or any part thereof, be perishing or perishable, or deteriorating in value; and if the same be so found by the court, upon said report or other evidence, the court may thereupon order an interlocutory sale thereof by the United States marshal, and the deposit of the gross proceeds of such sale in the registry of the court to abide the further order of the court, whether a claim to said property has or has not been interposed. It shall be the further duty of the said prize commissioners to receive from the prize master all the papers and documents, and forthwith to proceed to take the testimony of the witnesses prescribed by law, pursuant to the rules and under the interrogatories adopted by the court, and separately from each other and unattended by counsel, and the said papers, documents, and testimony, securely to seal with their seals, and as soon as practicable deposit in the registry of the court; and thereafter, promptly and without unnecessary delay, the court shall proceed to hearing and adjudication.

SEC. 2. *And be it further enacted*, That all reasonable and proper claims and charges for pilotage, towage, wharfage, storage, insurance, and other expenses incident to the bringing in and safe custody and sale of the property captured as prize, shall be a charge upon the same, and, having been audited and allowed by the court, shall, in event of a decree of condemnation or of restitution on payment of costs, be paid out of the proceeds of any sale of the property, final or interlocutory, in the custody of the court. In case of a decree of restitution upon payment of costs, where no sale has been made, such charges and expenses shall constitute part of said costs to be paid by the claimant.

SEC. 3. *And be it further enacted*, That the prize commissioners, and also the district attorney, acting for the United States, and the counsel for the captors, shall be entitled to receive a just and suitable compensation for their several and respective services in each prize case or proceeding; and the same shall be adjusted and determined by the court upon due consideration of the facts and circumstances of each case and of the services actually rendered therein; and the same, when so adjusted, shall, in case of final condemnation or restitution on payment of costs, be paid out of the proceeds of the prize property in the custody of the court, or when no sale has been made, in whole or in part, as the court may direct by the claimant.

SEC. 4. *And be it further enacted*, That whensoever a final decree of condemnation of property captured as prize shall have been made, unless an interlocutory sale has been made as hereinbefore provided for, the property shall be sold by the United States marshal pursuant to practice and proceedings in admiralty, and the gross proceeds of such sale shall be forthwith deposited in court; and thereupon the prize commissioners shall proceed, under the direction of the court, to take the requisite evidence, and report the same to the court, to the end that a final decree shall be made determining what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture, and within thirty days after the entry of the same the clerk of the court shall transmit to the Treasury of the United States the moneys so deposited in court, together with a certified copy of the said decree, after deducting from said moneys the costs of court and the charges and expenses hereinbefore provided for.

SEC. 5. *And be it further enacted*, That the provisions of this act shall apply as well to cases now pending as to all future cases of maritime captures, and to captures and seizures made under the laws for the abolition of the slave trade; and all laws and parts of laws inconsistent herewith are hereby repealed.

Approved, March 25, 1862.

[12 Stat. L., p. 600.]

[Extract from an act for the better government of the Navy of the United States.]

SEC. 2. *And be it further enacted*, That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.

SEC. 3. *And be it further enacted*, That the prize money belonging to the officers and men shall be distributed in the following manner:

First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize money awarded to a vessel or vessels under his immediate command.

Second. To the commander of a single ship, one-tenth part of all prize money awarded to the ship under his command, if such ship, at the time of making the capture, was under the immediate command of the commanding officer of a fleet or squadron, and three-twentieths if his ship was acting independently of such superior officer.

Third. The share of the commanding officer of the fleet or squadron, if any, and the share of the commander of the ship being deducted, the residue shall be distributed and apportioned among all others doing duty on board, and borne upon the books, according to their respective rates of pay in the service.

Fourth. When one or more vessels of the navy shall be within signal distance of another making a prize, all shall share in the prize, and money awarded shall be apportioned among the officers and men of the several vessels according to the rates of pay of all on board who are borne upon the books, after deducting one-twentieth to the flag-officer, if there be any such entitled to share.

Fifth. No commander of a fleet or squadron shall be entitled to receive any share of prizes taken by vessels not under his immediate command; nor of such prizes as may have been taken by ships or vessels intended to be placed under his command before they have acted under his immediate orders; nor shall a commander of a fleet or squadron, leaving the station where he had the command, have any share in the prizes taken by ships left on such station after he has gone out of the limits of his said command, nor after he has transferred his command to a successor.

Sixth. No officer or other person who shall have been temporarily absent on duty from the vessel, on the books of which he continued to be borne while so absent, shall be deprived, in consequence of such absence, of any prize money to which he would otherwise be entitled.

SEC. 4. *And be it further enacted*, That a bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement which shall be sunk or otherwise destroyed in such engagement, by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hun-

dred dollars, if the enemy's vessel was of inferior force; and of two hundred dollars, if of equal or superior force; to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of their class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which shall be immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture.

SEC. 5. *And be it further enacted*, That the commanding officer of every vessel, or the senior officers of all vessels of the Navy, which shall capture or seize upon any vessel or vessels as a prize, shall carefully preserve all the papers and writings found on board, and transmit the whole of the originals, un mutilated, to the judge of the district to which such prize is ordered to proceed, with the necessary witnesses, and a report of the circumstances attending the capture, stating the names of vessels claiming a share thereof; and the commanding officer of every vessel in the Navy entitled to, or claiming an award of prize money shall, as early as practicable after the capture, transmit to the Navy Department a complete list of the officers and men of his vessel, entitled to share, inserting thereon the quality of every person rating, on pain of forfeiting his whole share of the prize money resulting from such capture, and suffering such further punishment as a court-martial shall adjudge.

SEC. 6. *And be it further enacted*, That any armed vessel in the service of the United States which shall make a capture, or assist in a capture, under circumstances which would entitle a vessel of the Navy to prize money, shall be entitled to an award of prize money in the same manner as if such vessel belonged to the Navy; and such prize money shall be distributed and apportioned in the same manner and under the same rules and regulations as provided for persons in the naval service, and paid under the direction of the Secretary of the Navy.

SEC. 7. *And be it further enacted*, That no person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or absolutely necessary for the use of any of the vessels or armed forces of the United States, before the same shall be adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, and judgment passed thereon, upon pain that every person offending herein shall forfeit his share of the capture, and suffer such further punishment as a court-martial shall adjudge.

SEC. 8. *And be it further enacted*, That no person in the Navy shall strip off the clothes, or pillage, or in any manner maltreat, persons taken on board a prize, on pain of such punishment as a court-martial shall adjudge.

SEC. 9. *And be it further enacted*, That all ransom money, salvage, bounty or proceeds of forfeiture or confiscation, accruing or awarded to any vessel of the Navy, shall be distributed and paid to the officers and men entitled thereto, in the same manner as prize money, under the direction of the Secretary of the Navy.

SEC. 10. *And be it further enacted*, That any person entitled to wages or prize money may have the same paid to his assignee, provided the assignment be attested to by the captain and paymaster; and in case of the assignment of wages, the power shall specify the precise time they commence. But the commander of every vessel is required to discourage his crews from selling any part of their wages or prize money, and never to attest any power of attorney, until he is satisfied that the same is not granted in consideration of money given for the purchase of wages or prize money.

SEC. 11. *And be it further enacted*, That all money accruing or which has already accrued to the United States from sale of prizes shall be and remain forever a fund for the payment of pensions to the officers, seamen, and marines who may be entitled to receive the same; and if the said fund shall be insufficient for the purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines.

SEC. 12. *And be it further enacted*, That the district attorneys of the several districts of the courts of the United States, in which any cases of prize are, or may be depending, shall, as soon as may be after the passage of this act, furnish to the Navy Department a complete list of all the prize cases which have been determined, or may still be pending within their respective districts, with a statement of the condition of each, in such form and embracing such particulars as the Secretary of the Navy may require, and shall, as often as once in each month, thereafter, furnish a further statement of the condition of every case in their respective districts, and of any further proceedings had therein since their last returns.

And the Secretary of the Navy is hereby authorized to appoint an agent or to employ counsel when the captors do not employ counsel themselves, in any case in which he may consider it necessary to assist the district attorneys and protect the interests of the captors, with such compensation as he may think just and reason-

able. And it shall be the duty of the several marshals of the United States to furnish to the Navy Department on request or to its agent, a full and particular statement of the disposition of every prize vessel and cargo, in such form and with such details as the Secretary of the Navy may require, and as often as he may require the same; and said marshals shall also furnish to the Navy Department or their aforesaid agent, a full and particular statement of all fees, charges, and allowances of every description claimed by them in each case of prize, before the same are allowed by the court, and no such charges for disbursements of any kind shall be allowed unless accompanied by the affidavit of the marshal that the same have been actually and necessarily incurred in the case; and it shall be the duty of the district attorney to attend on the settlement and allowance of all such bills and protect the interests of the United States and of the captors against any improper and unlawful claims. And whenever a final decree of condemnation shall have been made, or any interlocutory sale has been ordered, the property shall be sold by the marshal pursuant to the practice and proceedings in admiralty, and the gross proceeds of such sale shall be forthwith deposited with the assistant treasurer of the United States at, or nearest to, the place where such sale is made, and the money so deposited shall remain in the Treasury of the United States until a final decree of distribution, or until a decree of restitution shall be made, and a certified copy thereof furnished, upon which the costs of court and the lawful charges and expenses shall be paid, and the balance distributed according to said decree: *Provided*, That the annual salaries of district attorneys, prize commissioners, and marshals shall in no case be so increased under the several acts for compensation in prize so as to exceed, in the aggregate, the following sums, and any balance beyond the several sums shall be paid into the Treasury, viz: District attorneys, six thousand dollars; prize commissioners, three thousand dollars; marshals, six thousand dollars.

Approved, July 17, 1862.

[12 Stat. L., p. 627.]

A RESOLUTION in relation to the law of prize.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter all moneys arising from the sale of property under the prize laws of the United States, whether under interlocutory or final decree, shall be paid by the marshal into the Treasury of the United States for safe keeping immediately after the day of sale, instead of the registry of the court, less the costs and disbursements sworn to by the marshal and taxed by the court; and every clerk of a United States court now having any such moneys in hand shall immediately pay the same into the Treasury of the United States, less the costs and disbursements, to be sworn to and taxed as aforesaid, and upon a final decree of condemnation or restitution, it shall be the duty of the Secretary of the Treasury, and he is hereby authorized to pay over the same upon the order of the proper court, and no more shall be retained by any clerk from money received and paid over by him under this resolution as commissions or otherwise, than one per centum upon the first one thousand dollars in each case, and one-fourth of one per centum on the excess above that sum, not, however, to exceed two hundred and fifty dollars in each case.

Approved, July 17, 1862.

[12 Stat. L., p. 758.]

AN ACT concerning letters of marque, prizes, and prize goods.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all domestic and foreign wars the President of the United States is authorized to issue to private armed vessels of the United States, commissions, or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, and make all needful rules and regulations for the government and conduct thereof, and for the adjudication and disposal of the prizes, and salvages made by such vessels: *Provided*, That the authority conferred by this act shall cease and terminate at the end of three years from the passage of this act.

Approved, March 3, 1863.

[12 Stat. L., p. 762.]

AN ACT to protect the liens upon vessels in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases now or hereafter pending wherein any ship, vessel, or other property, shall be condemned in any proceeding by virtue of the

acts¹ above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under the laws of the United States or of any loyal State thereof: *Provided*, That no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property: *And provided, also*, That this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property, in any loyal State wherein such claim arose.

Approved, March 3, 1863.

[12 Stat. L., p. 759.]

AN ACT further to regulate proceedings in prize cases, and to amend various acts of Congress in relation thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any prize property shall be condemned in any district or circuit court, or shall at any stage of the proceedings be found by the court to be perishing, perishable, or liable to deteriorate or depreciate, or whenever the costs of keeping the same shall be disproportionate to its value, or whenever all the parties in interest who have appeared in the case shall agree thereto, it shall be the duty of the court to order a sale thereof, and no appeal shall operate to prevent the making or execution of such order. And upon any sale, it shall be the duty of the marshal forthwith to deposit the gross proceeds of the sale with the assistant treasurer of the United States nearest to the place of sale, and subject to the order of the court in the particular case; and the court may at any time order the payment from such deposit of the expenses and disbursements necessarily incurred in the custody, preservation, and sale of said property, audited and allowed by the court in the manner provided by law. And when a decree of condemnation shall be made in any cause, the court may, in like manner, order the payment from said deposit of the costs, fees, and charges decreed in the cause. And on a final decree of distribution, after the payment of such costs, fees, and expenses, the residue of the deposits shall, by order of the court, be paid into the Treasury of the United States for distribution according to the decree. And the clerk of the court shall forthwith transmit to the Secretary of the Treasury and the Secretary of the Navy certified copies of said final decree of distribution; and in case the final decree shall be for restitution without costs, the costs, fees, and disbursements allowed by the court and unpaid shall be a charge upon the fund for defraying the expenses of suits in which the United States is a party or interested. And the Treasury Department shall credit the Navy Department with the amount held for distribution; and the several officers, marines, sailors, and other persons in the naval service entitled to share in the prize money, shall be credited in their accounts with the Navy Department with the amount to which they are respectively entitled.

SEC. 2. *And be it further enacted*, That the Secretary of the Navy or the Secretary of War shall be, and they or either of them are hereby, authorized to take any captured vessel, any arms or munitions of war, or other material, for the use of the Government; and when the same shall have been taken, before being sent in for adjudication, or afterwards, the department for whose use it was taken shall deposit the value of the same in the Treasury of the United States, subject to the order of the court in which prize proceedings shall be taken in the case; and when there is a final decree of distribution in the prize court, or if no proceedings in prize shall be taken, the money shall be credited to the Navy Department to be distributed according to law.

SEC. 3. *And be it further enacted*, That the Secretary of the Navy shall employ an auctioneer or auctioneers of established reputation in that branch of merchandise, to make sales of all prize goods, under the direction of the marshal of the district in which the property shall be ordered to be sold, and at a rate of compensation not to exceed in any case one and one-fourth per centum upon the gross amount of the sales; and such sales shall be advertised in the fullest and most conspicuous manner, and to the satisfaction of the Secretary of the Navy; and any fraud, collusion, or combination, or any act or fraudulent device or contrivance in the sale and disposition of any prize property, by which the captors or the Government are or may be

¹ Reference is had to the act of July 13, 1861, ch. 3 (*ante*, p. 255), and to the act of August 6, 1861, ch. 60 (*ante*, p. 319), which were recited in the title of the bill as reported. When the act was passed its title was changed, but this clause was not altered.

defrauded, shall be, and is hereby declared to be a felony; and any public officer or agent, or any other person engaged therein, upon conviction thereof by or before any court of competent jurisdiction, shall be liable to a fine not exceeding twenty thousand dollars, and to imprisonment not exceeding ten years, or to both, in the discretion of the court.

SEC. 4. *And be it further enacted*, That the third section of the act of twenty-fifth March, eighteen hundred and sixty-two, entitled "An act to facilitate evidence and proceedings in and adjudications upon captured property of prize," be, and the same is hereby, amended, so that the compensation of counsel to the captors to be adjusted and determined by the court, and paid and allowed as costs, shall be confined to compensation for such services as may be rendered necessary by reason of the captors having interests conflicting with those of the United States, and proper in the opinion of the court to be represented by separate counsel from those representing the United States. And so much of the twelfth section of the act of July seventeen, eighteen hundred and sixty-two, entitled "An act for the better government of the Navy of the United States," as authorizes the Secretary of the Navy to employ an agent or counsel for the captors and to fix his compensation, is hereby repealed.

SEC. 5. *And be it further enacted*, That the commissioners in prize shall not exceed two in any district of the courts of the United States, to be appointed by the district court of each district, one of whom shall be a retired naval officer, to be appointed by the court and approved by the Secretary of the Navy; and the annual salaries in each district of both commissioners shall not exceed six thousand dollars; and all counsel fees in prize cases in the Supreme Court of the United States, which have been or may be incurred or authorized by any department of the Government, shall be audited and allowed by the Attorney-General and Solicitor of the Treasury, and shall be a charge upon and paid out of the fund appropriated for defraying the expenses of suits in which the United States are parties or interested.

SEC. 6. *And be it further enacted*, That when the court shall allow witnesses' fees to any witness in a prize cause, and the court has no money subject to its order in the cause, the same shall be paid by the marshal as in the case of witnesses in causes in which the United States is a party, and shall be repaid from any money deposited to the order of the court in said cause.

SEC. 7. *And be it further enacted*, That appeals from the district courts of the United States in prize causes shall be directly to the Supreme Court, and shall be made within thirty days of the rendering of the decree appealed from, unless the court shall previously have extended the time for cause shown in the particular case; and the Supreme Court shall always be open for the entry of such appeals. Such appeals may be claimed whenever the amount in controversy exceeds two thousand dollars, and in other cases on the certificate of the district judge that the adjudication involves a question of difficulty and general importance.

SEC. 8. *And be it further enacted*, That all provisions of law which are inconsistent with those of this act shall be, and are hereby, repealed.

Approved, March 3, 1863.

[13 Stat. L., p. 306.]

AN ACT to regulate prize proceedings and the distribution of prize money, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the commanding officer of any vessel or vessels making a capture to secure the documents of the ship and cargo, including the log-book, with all other documents, letters, and other papers found on board, and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and in the condition in which they were found, or explaining the absence of any documents or papers, or any change in their condition. He shall send to said court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting, the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient in view of the interests of probable claimants, as well as of the captors. If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their report shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer

of the United States most accessible to said court, and subject to its order in the cause.

SEC. 2. *And be it further enacted*, That if any vessel of the United States shall claim to share in the prize, either as having made the capture, or as having been within signal distance of the vessel or vessels making the capture, the commanding officer of such vessel shall make out a written statement of his claim, with the grounds on which it is rested, the principal facts tending to show what vessels made the capture, and what vessels were within signal distance of those making the capture, with reasonable particularity as to times, distances, localities, and signals made, seen, or answered; and such statement of claim shall be signed by him and sent to the court in which proceedings shall be had, and shall be filed in the cause.

SEC. 3. *And be it further enacted*, That it shall be the duty of the prize master to make his way diligently to the selected port, and there immediately deliver to a prize commissioner the documents and papers and the inventory thereof, and make affidavit that they are the same and in the same condition as delivered to him, or explaining any absence or change of condition therein, and that the prize property is in the same condition as delivered to him, or explaining any loss or damage thereto; and he shall further report to the district attorney and give to him all the information in his possession respecting the prize and her capture, and he shall deliver over the persons sent as witnesses to the custody of the marshal, and shall retain the prize in his custody until it shall be taken therefrom by process from the prize court.

SEC. 4. *And be it further enacted*, That the attorney of the United States for the district shall immediately file a libel against such prize property, and shall forthwith obtain a warrant from the court directing the marshal to take it into his custody, and shall proceed diligently to obtain a condemnation and distribution thereof, and to that end shall see that the proper preparatory evidence is taken by the prize commissioners, and that the prize commissioners also take the depositions *de bene esse* of the prize crew and other transient persons cognizant of any facts bearing on condemnation or distribution. It shall also be the duty of the district attorney to represent the interests of the United States in all prize causes, and he shall not act as separate counsel for the captors on any private retainer or compensation from them, unless in a question between the claimants and the captors on a demand for damages. The district attorney shall examine all fees, costs, and expenses, sought to be charged on the prize fund, and protect the interest of the captors and of the United States. The district attorneys of all districts in which any prize causes are or may be pending, shall, as often as once in three months, send to the Secretary of the Navy a statement of the condition of all prize causes pending in their districts, in such form and embracing such particulars as the Secretary of the Navy shall require.

SEC. 5. *And be it further enacted*, That any district court may appoint prize commissioners, not exceeding three in number, of whom one shall be a retired naval officer, approved by the Secretary of the Navy, who shall receive no other compensation than his pay in the Navy, and who shall protect the interests of the captors and of the Department of the Navy in the prize property, and at least one of the others shall be a member of the bar of the court, of not less than three years' standing, and acquainted with the taking of depositions.

SEC. 6. *And be it further enacted*, That the prize commissioners, or one of them, shall receive from the prize master the documents and papers, and inventory thereof, and shall take the affidavit of the prize master hereinbefore required, and shall forthwith take the testimony of the witnesses sent in, separate from each other, on interrogatories prescribed by the court, in the manner usual in prize courts; and the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested, without special authority from the court; and the witnesses who have the rights of neutrals shall be discharged as soon as practicable. The prize commissioners shall also take depositions *de bene esse* of the prize crew and others, at the request of the district attorney, on interrogatories prescribed by the court. They shall also, as soon as any prize property comes within the district for adjudication, examine the same, and make an inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen, they shall apply to the court for an order to the marshal to unlade the same, and shall, from time to time, report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court, but the custody of the property shall be only in the marshal. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken *de bene esse*, and their own inventory of the prize

property; and if the captured vessel, or any of its cargo or stores are such that, in their judgment, may be useful to the Government in war, they shall report the same to the Secretary of the Navy.

SEC. 7. *And be it further enacted*, That the marshal shall safely keep all prize property under warrant from the court, and shall report to the court any cargo or other property that he thinks requires to be unladen and stored, or to be sold. He shall insure prize property, if, in his judgment, it is for the interest of all concerned. He shall keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize commissioners or the court. If a sale of property is ordered, he shall sell the same in the manner required by the court, and collect the purchase money, and forthwith deposit the gross proceeds of the sales with the assistant treasurer of the United States nearest the place of sale, subject to the order of the court in the particular cause; and each marshal shall forward to the Secretary of the Navy, whenever and as often as he may require it, a full statement of the condition of each prize and of the disposition made thereof.

SEC. 8. *And be it further enacted*, That whenever any prize property shall be condemned, or shall at any stage of the proceedings be found by the court to be perishing, perishable, or liable to deteriorate or depreciate, or whenever the costs of keeping the same shall be disproportionate to its value, it shall be the duty of the court to order a sale thereof; and whenever, after the return day on the libel, all the parties in interest who have appeared in the cause shall agree thereto, the court is authorized to make such order, and no appeal shall operate to prevent the making or execution of such order. The Secretary of the Navy shall employ an auctioneer or auctioneers of known skill in the branch of business to which any sale pertains, to make the sale, but the sale shall be conducted under the supervision of the marshal, and the collecting and depositing of the gross proceeds shall be by the auctioneer or his agent. Before any sale the marshal shall cause full catalogues and schedules to be prepared and circulated, and a copy of each shall be returned by the marshal to the court in each cause. The marshal shall cause all sales to be advertised fully and conspicuously in newspapers ordered by the court, and by posters, and he shall, at least five days before the sale, serve notice thereof upon the naval prize commissioner, and the goods shall be open to inspection at least three days before the sale.

SEC. 9. *And be it further enacted*, That in case a decree of condemnation shall be rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors and what vessels are entitled to share, and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul, or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank, reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. And said decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors and one-half to the United States.

SEC. 10. *And be it further enacted*, That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors: *Provided*, That in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels. All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances, and in such condition as to be able to render effective aid if required, shall share in the prize; and in case of vessels not of the Navy, none shall be entitled to share except the vessel or vessels making the capture, in which term shall be included vessels present at the capture and rendering actual assistance in the capture. All prize money adjudged to the captors shall be distributed in the following proportions, namely:

First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize money awarded to any vessel or vessels under his immediate command.

Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander in chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize money awarded to a vessel of such division for a capture made while under his command, the said fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors: *Provided*, That such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and

which he may elect to receive, as commander of a single ship making or assisting in the capture.

Third. To the fleet captain, one-hundredth part of all prize money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel, as is hereinafter provided.

Fourth. To the commander of a single ship, one-tenth part of all the prize money awarded to the ship under his command, if such ship at the time of the capture was under the command of the commanding officer of a fleet or squadron, or a division, and three-twentieths if his ship was acting independently of such superior officer.

Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board (including the fleet captain), and borne upon the books of the ship, in proportion to their respective rates of pay in the service.

No commanding officer of a fleet or squadron shall be entitled to receive any share of prizes captured by any vessel or vessels not under his command, nor of such prizes as may have been captured by any ships or vessels intended to be placed under his command, before they have acted under his orders. Nor shall the commanding officer of a fleet or squadron, leaving the station where he had command, have any share in the prizes taken by ships left on such station after he has gone out of the limits of his said command, nor after he has transferred his command to his successor. No officer or other person who shall have been temporarily absent on duty from a vessel on the books of which he continued to be borne, while so absent, shall be deprived, in consequence of such absence, of any prize money to which he would otherwise be entitled. And he shall continue to share in the captures of the vessels to which he is attached until regularly discharged therefrom.

SEC. 11. *And be it further enacted*, That a bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which shall be sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which shall be immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture. All ransom money, salvage, bounty, or proceeds of condemned property accruing or awarded to any vessel of the Navy, shall be distributed and paid to the officers and men entitled thereto in the same manner as prize money, under the direction of the Secretary of the Navy.

SEC. 12. *And be it further enacted*, That every assignment of prize or bounty money, or wages, due to persons enlisted in the naval service, and all powers of attorney or other authority to draw, receipt for, or transfer the same, shall be void, unless the same be attested by the captain, or other commanding officer, and the paymaster; and in case of any assignment of wages, the same shall specify the precise time when they commence. But the commanding officer of every vessel is required to discourage his crew from selling any part of their prize money or wages, and never to attest any power of attorney until he is satisfied that the same is not granted in consideration of money given for the purchase of prize money or wages.

SEC. 13. *And be it further enacted*, That appeals from the district courts of the United States in prize causes shall be directly to the Supreme Court, and shall be made within thirty days of the rendering of the decree appealed from, unless the court shall previously have extended the time, for cause shown in the particular case, and the Supreme Court shall always be open for the entry of such appeals. Such appeals may be claimed whenever the amount in controversy exceeds two thousand dollars, and, in other cases, on the certificate of the district judge that the adjudication involves a question of general importance. Notwithstanding such appeal, the district court may make and execute all necessary orders for the custody and disposal of the prize property; and in case of appeal from a decree of condemnation, may still proceed to make a decree of distribution so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. Any prize cause now pending in any circuit court shall, on the application of all parties in interest, who have appeared in the cause, be transferred by that court to the Supreme Court; and such transfer may be made, in the discretion of the court, and on such terms as it may direct, on the application of

any party: *Provided*, That if the amount in controversy does not exceed two thousand dollars, such transfer shall not be made unless the court shall certify that the adjudication involves a question of general importance. All appeals to the Supreme Court from the circuit court in prize causes, now remaining therein, shall be claimed and allowed in the same manner as in cases of appeal from the district court to the Supreme Court. In any case of appeal or transfer, the court below, or the appellate court, may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof.

SEC. 14. *And be it further enacted*, That all costs and all expenses incident to the bringing in, custody, preservation, insurance, sale, or other disposal of prize property, when allowed by the court, shall be a charge upon the same, and be paid therefrom, unless the court shall decree restitution free from such charge. No payments shall be made from any prize fund, except upon the order of the court. All charges for work and labor, materials furnished, or money paid, shall be supported by affidavit or vouchers. The court may, at any time, order the payment, from the deposit made with the assistant treasurer in the cause, of any costs or charges accrued and allowed. When the cause is finally disposed of, the court shall make its order or orders on the assistant treasurer to pay the costs and charges allowed and unpaid; and in case the final decree shall be for restitution, or in case there shall be no money subject to the order of the court in the cause, any costs or charges allowed by the court, and not paid by the claimants, shall be a charge upon, and be paid out of, the fund for defraying the expenses of suits in which the United States is a party or interested.

SEC. 15. *And be it further enacted*, That the court may require any party, at any stage of the cause, and on claiming an appeal, to give security for costs.

SEC. 16. *And be it further enacted*, That the net amount decreed for distribution to the United States, or to vessels of the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. And the Treasury Department shall credit the Navy Department with each amount received to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled. In case of vessels not of the Navy, the distribution shall be made by the court to the several parties entitled thereto, and the amounts decreed to them shall be divided between the owners and the ship's company, according to any written agreement between them, and in the absence of such agreement, one-half to the owners and one-half to the ship's company, according to their respective rates of pay on board; and the court may appoint a commissioner to make such distribution, subject to the control of the court, who shall make due return of his doings, with proof of actual payments by him, and who shall receive no other compensation, directly or indirectly, than such as shall be allowed him by the court: *Provided*, That in case of vessels not of the Navy, but controlled by any department of the Government, the whole amount decreed to the captors shall be divided among the ship's company.

SEC. 17. *And be it further enacted*, That the clerk of each district court shall render to the Secretary of the Treasury and the Secretary of the Navy a semiannual statement, beginning with the first day of July next, of all the sums allowed by the court and ordered to be paid, within the previous half year, to the district attorney and prize commissioners for services, and to marshals for fees and commissions; and he shall, in all prize causes in the district, for the purpose of the final decree of distribution, ascertain and keep an account of the amount deposited with the assistant treasurer, subject to the order of the court, in each prize cause, and the amounts ordered to be paid therefrom as costs and charges, and the residue for distribution; and shall send copies of all final decrees of distribution to the Secretary of the Treasury and the Secretary of the Navy; and shall draw the orders of the court for the payment of all costs and allowances, and for the distribution of the residue. And for the said services he shall be entitled to receive the sum of twenty-five dollars in each prize cause, which shall be in full for the services required by this section.

SEC. 18. *And be it further enacted*, That the marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, sale, or other disposal of the prize property, and for executing any order of the court respecting the same, and shall have a commission of one-quarter of one per centum on vessels, and of one-half of one per centum on all other prize property, calculated on the gross proceeds of each sale; and if, after he shall have had any prize property in his custody, and shall have actually performed labor and incurred responsibility for the care and preservation thereof, the same shall be taken by the United States for its own use without a sale, or if it shall be delivered on stipulation to the claimants, he shall, in case the same shall be condemned, be entitled to one-half the above commissions on the amount deposited by the United States to the order of the courts, or collected upon the stipulation. No charges of the marshal for expenses

or disbursements shall be allowed, except upon his oath that the same have been actually and necessarily incurred for the purpose stated.

SEC. 19. *And be it further enacted*, That neither the marshal nor the clerk shall be permitted to retain for all official services, of every kind, excepting those in prize causes, more than the maximum compensation allowed to be retained by him by the third section of the act of the twenty-sixth of February, eighteen hundred and fifty-three; nor shall the additional compensation which either of said officers shall be permitted to retain for all services, of every kind, in prize causes, exceed one-half the maximum compensation allowed to them, respectively, by the aforesaid act.

SEC. 20. *And be it further enacted*, That the district attorney and prize commissioners, except the naval officer, shall be allowed a just and suitable compensation for their respective services in each prize cause, to be adjusted and determined by the court, and to be paid as costs in the cause.

SEC. 21. *And be it further enacted*, That each district attorney and prize commissioner, except the naval officer, shall render to the Secretary of the Interior an annual account, beginning with the first day of July next, of all sums he shall have received for all services in prize causes within the previous year; and the district attorney shall be allowed to retain therefrom a sum not exceeding three thousand dollars for each year, in addition to the maximum compensation allowed to be retained by him by the third section of the act of the twenty-sixth February, eighteen hundred and fifty-three, or in addition to any salary he may receive in lieu of such maximum compensation; and each such prize commissioner shall be allowed to retain a sum not exceeding three thousand dollars for each year, which shall be in full for all his official services in prize causes; and any excess over those respective amounts shall be paid by the officers receiving the same into the Treasury of the United States, and shall be credited to the fund for paying naval pensions.

SEC. 22. *And be it further enacted*, That the auctioneers employed to make sales of prize property shall be entitled to receive commissions by a scale to be established by the Secretary of the Navy, not to exceed, in any case, one-half of one per centum on any sum exceeding ten thousand dollars on vessels, nor one per centum on said sum of other prize property, which shall be in full for his expenses, as well as their services; and in case no such scale shall be established, they shall be entitled to receive such compensation as the court shall deem just under the circumstances of each case.

SEC. 23. *And be it further enacted*, That in any case of capture heretofore made, or that may hereafter be made by vessels of the Navy, the Secretary of the Navy may employ special counsel for captors, when, in his judgment, the services of such special counsel are needed in the particular case, for the due protection of the interests of the captors and of the navy-pension fund; and under the direction of the Secretary of the Navy such counsel may institute and prosecute such proceedings in the case as may be necessary and proper for the protection of such interests. The court may allow such compensation as it shall deem just under the circumstances of each case to special counsel for captors, not being the district attorney or any of his assistants, whether appointed by a department of the Government or by the captors, for services actually rendered in the cause, to be paid as costs, in whole or in part either from the entire fund or from the portion awarded to the captors; but no such allowance shall be made except for services rendered on matters as to which the party the counsel represents has an adverse interest to the United States, or an interest otherwise proper in the opinion of the court to be represented by special counsel, or for services rendered in a contestation between parties claiming to participate in the distribution of the proceeds.

SEC. 24. *And be it further enacted*, That fees of special counsel in prize cases incurred or authorized by any department of the Government, or for the defence of captors against demands for damages made by claimants in the district court, not paid by claimants, nor from the prize fund in the particular cause, and audited and allowed by the Department incurring or authorizing them, and by the Solicitor of the Treasury, shall be a charge upon, and paid out of, the funds appropriated for defraying the expenses of suits in which the United States is a party or interested.

SEC. 25. *And be it further enacted*, That whenever the court shall allow fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the same shall be paid by the marshal, and shall be repaid to him from any money deposited to the order of the court in said cause; and any amount not so repaid the marshal shall be allowed as witness fees paid by him in cases in which the United States is a party.

SEC. 26. *And be it further enacted*, That no prize property shall be delivered to the claimants on stipulation, deposit, or other security, except where there has been a decree of restitution and the captors have appealed therefrom, or where the court, after a full hearing on the preparatory proofs, has refused to condemn the property on those proofs, and has given the captors leave to take further proofs, or where the

claimant of any property shall satisfy the court that the same has a peculiar and intrinsic value to him, independent of its market value. In any of these cases, the court may deliver the property on stipulation or deposit of its value, if it shall be satisfied that the rights and interests of the United States and captors, or of other claimants, will not be prejudiced thereby, a satisfactory appraisalment being first made, with an opportunity given to the district attorney and naval prize commissioner to be heard as to the appointment of appraisers. And any money deposited in lieu of stipulation, and all money collected on a stipulation, not being costs, shall be deposited with the assistant treasurer in the same manner as proceeds of a sale.

SEC. 27. *And be it further enacted*, That whenever any captured vessel, arms, munitions, or other material shall be taken for the use of the Government before it comes into the custody of a prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisalment, and inventory shall be sent to the court in which proceedings are to be had; and if taken afterwards, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize property heretofore taken for, or appropriated to, the use of the Government, or that shall hereafter be so taken or appropriated, the department for whose use it was or shall be taken or appropriated, shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.

SEC. 28. *And be it further enacted*, That in case of any capture heretofore made, or that shall hereafter be made, if, by reason of its condition, or because the whole has been appropriated to the use of the United States, no part of the captured property has been or can be sent in for adjudication, or if the captured property be entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate. And in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the Government, shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district. And if, in any case of capture, no proceedings for adjudication shall be commenced within a reasonable time, any parties claiming the captured property may, in any district court, as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified.

SEC. 29. *And be it further enacted*, That when any vessel or other property shall have been captured by any force hostile to the United States, and shall be recaptured, and it shall appear to the court that the same had not been condemned as prize before its recapture, by any competent authority, the court shall award a meet and competent sum as salvage, according to the circumstances of each case; and if the captured property belonged to the United States, it shall be restored to the United States, and there shall be paid from the Treasury of the United States the salvage, costs, and expenses ordered by the court; and if the recaptured property belonged to persons residing within or under the protection of the United States, the court shall adjudge the property to be restored to its owners upon their claim, on the payment of such sum as the court may award as salvage, costs, and expenses; and if the recaptured property belonged to any person permanently resident within the territory and under the protection of any foreign prince, government, or state in amity with the United States, and by the law or usage of such prince, government, or state, the property of a citizen of the United States would be restored under like circumstances of recapture, it shall be adjudged to be restored to such owner upon his claim, upon such terms as by the law or usage of such prince, government, or state would be required of a citizen of the United States under like circumstances of recapture; and when no such law or usage shall be known, it shall be adjudged to be restored upon the payment of such salvage, costs, and expenses as the court shall order: *Provided*, That nothing in this act shall be construed to contravene any treaty of the United States. And the whole amount awarded as salvage shall be decreed to the captors, and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize.

SEC. 30. *And be it further enacted*, That if it shall appear to the court, in the case of any prize property ordered to be sold, that it will be for the interest of all parties to have it sold in another district, the court may direct the marshal to transfer the same to the district selected by the court for the sale, and to insure the same with proper orders as to the time and manner of selling the same. And it shall be the duty of the marshal so to transfer the property, and keep and sell the same in like

manner as if the property were in his own district; and he shall deposit the gross proceeds of the sale with the assistant treasurer nearest to the place of sale, subject to the order of the court in which the adjudication thereon is pending; and the necessary expense attending the insuring, transferring, receiving, keeping, and selling the said property shall be a charge thereupon and upon the proceeds thereof; and whenever any such expense is paid in advance by the marshal, and he shall not be repaid from the proceeds, any amount not so repaid he shall be allowed as in case of expenses incurred in suits in which the United States is a party. The Secretary of the Navy may, in like manner, either by a general regulation or special direction in any cause, require a marshal to transfer any prize property from the district in which the judicial proceedings are pending to any other district for sale, and the same proceedings shall be had as if such transfer had been made by order of the court, as hereinbefore provided.

SEC. 31. *And be it further enacted*, That if any person shall wilfully do any act, or aid, assist, or advise in the doing of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States, or any captor or claimant of such property, he shall, on conviction, be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both, at the discretion of the court.

SEC. 32. *And be it further enacted*, That in the term "vessels of the Navy" shall be included, for the purposes of this act, all armed vessels officered and manned by the United States, and under the control of the Department of the Navy.

SEC. 33. *And be it further enacted*, That the provisions of this act shall be applied to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States.

SEC. 34. *And be it further enacted*, That this act shall apply to all prize proceedings now pending.

SEC. 35. *And be it further enacted*, That the act entitled "An act providing for salvage in cases of recapture," approved on the third day of March, in the year eighteen hundred, and the act entitled "An act in addition to the act concerning letters of marque, prizes, and prize goods," approved on the twenty-seventh day of January, in the year eighteen hundred and thirteen, and the act entitled "An act in addition to an act entitled an act in relation to the Navy pension fund," approved on the sixteenth day of April, eighteen hundred and sixteen, and an act entitled "An act to facilitate judicial proceedings in adjudications upon captured property and for the better administration of the law of prize," approved on the twenty-fifth day of March, eighteen hundred and sixty-two, and the second, sixth, and twelfth sections of an act entitled "An act for the better government of the Navy of the United States," approved on the seventeenth day of July, eighteen hundred and sixty-two, and the act entitled "An act further to regulate proceedings in prize cases and to amend various acts of Congress in relation thereto," approved on the third day of March, eighteen hundred and sixty-three, and all other acts and parts of acts inconsistent herewith, are hereby repealed.

Approved, June 30, 1864.

[13 Stat. L., p. 377.]

[Extract from an act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection.]

SEC. 6. *And be it further enacted*, That so much of the fifth section of the act approved May twenty, eighteen hundred and sixty-two, and the fourth section of the act approved March twelve, eighteen hundred and sixty-three, as directs the manner of distributing fines, penalties, and forfeitures, is hereby repealed, and that in lieu of the distribution thereby directed to be made to informers, collectors, and other officers of the customs, the court decreeing condemnation may award such compensation to customs officers, informers, or other persons, for any service connected therewith, as will tend to promote vigilance in protecting the public interests, and as shall be just and equitable, in no case, however, to exceed the aggregate amount heretofore directed by the said fifth section.

SEC. 7. *And be it further enacted*, That no property seized or taken upon any of the inland waters of the United States by the naval forces thereof, shall be regarded as maritime prize, but all property so seized or taken shall be promptly delivered to the proper officers of the courts, or as provided in this act and in the said act approved March twelve, eighteen hundred and sixty-three.

Approved, July 2, 1864.

[14 Stat. L., p. 395.]

AN ACT to authorize the payment of prize money to certain officers and enlisted men of the Signal Corps of the Army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to pay to the officers and enlisted men of the Signal Corps of the Army, who were assigned to and performed duty on the fleet under command of Admiral D. G. Farragut, while the said fleet was engaged in the action in Mobile Bay on the fifth day of August, anno Domini eighteen hundred and sixty-four, from any money not otherwise appropriated, such sum or sums as prize money, to each of them, respectively, as will be equal to what has been allowed in distribution to officers or sailors of the Navy of corresponding rank, the same as if their names had been, in any case, borne on the ship's books.

Approved, February 18, 1867.

[15 Stat. L., p. 120.]

AN ACT to facilitate the settlement of certain prize cases in the southern district of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed, upon the execution and delivery to him by the administratrix of the estate of James C. Clapp, deceased, late United States marshal for the southern district of Florida, of a proper written release of all claims and demands for, or on account of, all costs, charges, fees, and expenses due, or claimed to be due, the said Clapp as marshal aforesaid, or to his estate, in any prize or other cases in said district, to accept from said administratrix the sum of fifty thousand dollars in full satisfaction of all claims and demands of the United States against the estate of the said James C. Clapp, and against the sureties in said Clapp's official bond, and that said sum of fifty thousand dollars when paid, together with the the sums now on deposit with the assistant treasurer in New York to the credit of the said Clapp and to the credit of the United States district court for the southern district of Florida, shall be deposited with the assistant United States treasurer at Washington, District of Columbia, subject to the order of the United States district court for the southern district of Florida, for the purpose of meeting decrees of distribution or restitution in the following prize causes pending in said district: Schooner Lucy No. 1, the cargo of the steamer Adela, schooner Alicia and cargo, schooner Isabel and cargo, the steamer James Battle, schooner Diana and cargo, schooner Sea Lion and cargo, the cargo of the steamer Nita, steamer Pearl and cargo, schooner Teresa No. 2, steamer Union, steamer Victor and cargo, and schooner John Williams.

SEC. 2. *And be it further enacted,* That the Secretary of the Navy is hereby authorized and directed to deposit with the assistant United States treasurer at Washington, District of Columbia, the appraised values of the prize steamers Adela and Nita, condemned in said district court, and taken into the naval service, and, after deducting all proper charges and expenses, a moiety of the same shall be distributed under the decree of the said district court, according to law, among the captors entitled to share in said prizes, the steamers Adela and Nita respectively, and the remaining moiety of the same shall be subject to the order of the said district court, as herein-after provided.

SEC. 3. *And be it further enacted,* That of the moneys mentioned in the first section of this act, when deposited as herein provided, there shall be retained by the said district court a sufficient fund to await final decrees in those of the cases enumerated in the first section of this act, wherein appeals have been taken to the Supreme Court of the United States, and that the balance of said moneys, together with one-half of the appraised values of the prize steamers Adela and Nita, mentioned in the second section of this act, shall be distributed as prize money among the captors in those of the cases enumerated in the first section of this act, in which final decrees of condemnation have been entered and which are ready for distribution, without reference to the interest of the United States in any and all of the said cases, which said interest of the United States in each of the said cases, and the proceeds for distribution therein, as well as the interest of the United States in the appraised value of the prize steamers Adela and Nita, is hereby relinquished for distribution to the captors in those of the cases enumerated and mentioned in the first section of this act wherein decrees of condemnation have been or shall be entered, and for payment to the claimants in those of said cases wherein final decrees of restitution have been or may be passed; and that in each of said cases wherein final decrees of condemnation and distribution have been or shall be entered, the sum to be paid into the Treasury of the United States for distribution to the captors shall be one-half of the gross proceeds of sale in said cases, less the costs taxed and allowed by the court: *Provided,* That any sum or sums remaining after execution of all decrees of distribution and

restitution as hereinbefore provided, be paid into the Treasury of the United States to the credit of the navy pension fund: *And provided further*, That nothing herein contained shall be deemed an admission on the part of the United States of any liability for the defalcation of the said Clapp as marshal aforesaid.

Approved, July 20, 1868.

[15 Stat. L., p. 336.]

AN ACT relating to captures made by Admiral Farragut's fleet in the Mississippi River in May (1862), eighteen hundred and sixty-eight [two].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the vessels attached to or connected with Admiral Farragut's fleet in the river Mississippi which participated in the opening of that river and which resulted in the capture of New Orleans in the month of May, eighteen hundred and sixty-two, and which by law would have been entitled to prize money in the captures made by said vessels, shall be now entitled to the benefits of the prize laws in the same manner as they would have been had the district court for the eastern district of Louisiana been then open and the captures made by said vessels had been libelled therein; and any court of the United States having admiralty jurisdiction may take and have cognizance of all cases arising out of said captures, and the same proceedings shall be had therein as in other cases of prize.

SEC. 2. *And be it further enacted*, That the shares in such captures awarded to the officers and men entitled to prize shall be paid out of the Treasury of the United States.

Approved, March 3, 1869.

[17 Stat. L., p. 556.]

[Extract from an act making appropriations for the naval service for the year ending June 30, 1874, and for other purposes.]

SEC. 2. That the Supreme Court may, if, in its judgment, the purposes of justice require it, allow any amendment, either in form or substance, of any appeal in prize cases, or allow a prize appeal therein, if it appears that any notice of appeal or of intention to appeal was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein.

Approved, March 3, 1873.

[18 Stat. L., p. 63.]

AN ACT authorizing corrections to be made in errors of prize lists.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second and third paragraphs of the tenth section of the navy-prize law, approved June thirtieth, eighteen hundred and sixty-four, which relate to the shares of commanders of divisions and fleet captains, shall apply to officers serving in those positions from April, eighteen hundred and sixty-one (the commencement of the late war), and the shares shall be paid in the manner as provided for division commanders in said second paragraph, said payments to be made out of the naval pension fund; and all acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, June 8, 1874.

PRIZE MONEY AS CONSTRUED BY THE COURTS.

Property captured on land by the officers and crews of a naval force of the United States is not "maritime prize;" even though, like cotton, it may have been a proper subject of capture generally, as an element of strength to the enemy. (Mrs. Alexander's Cotton, 2d Wallace, p. 404.)

The right of vessels of the Navy of the United States to prize money comes only in virtue of grant or permission from the United States, and if no act of Congress sanctions a claim to it, it does not exist. No such act gives prize to the Navy in cases of joint capture by the Army and Navy. In cases of such capture, the capture inures exclusively to the benefit of the United States. (The Siren, 13th Wallace, p. 389.)

I. JURISDICTION IN PRIZE CASES.

1. The district courts, sitting as courts of prize, may hear and determine all questions respecting claims arising after the capture of the vessel. (The Siren, 7 Wall., 152.)

2. Captures, *jure belli*, upon the interior waters of the Mississippi, may be within the jurisdiction of a prize court. (United States v. Bales of Cotton, 1 Wool., 236.)

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3. Prize courts have not jurisdiction of captures, *jure belli*, on land, by land forces only. (*Ibid.*)

4. Where prize courts take jurisdiction of captures by combined land and naval forces, it must appear that the naval force contributed directly to the capture. (*Ibid.*)

5. Where a court of prize allows a claim for weighing or gauging the cargo of a condemned vessel, and directs it to be paid out of the fund for defraying the expenses of suits in which the United States is a party, or interested, this is a judicial determination of the validity and justice of the claim, which can not be questioned in another tribunal, and (the proceeds of the prizes having been paid into the Treasury and distributed according to law) the order is conclusive, without any reference to the Court of Claims. (*Root v. United States*, 5 N. & H., 408.)

II. WHAT IS LAWFUL PRIZE?

6. An American vessel carrying dispatches to the enemy in time of war is lawful prize. (*The Tulip*, Fish. Pr. Cas. 3. S. C.; 3 W. C. C., 181.)

7. Enemy's property, found derelict at sea, is lawful prize. (Seventy-eight Bales of Cotton, 1 Low. Dec. 11.)

8. Under what circumstances, a sum of money, the private property of the master of a neutral, captured for a breach of blockade, will be condemned as prize of war? (*The Wando*, 1 Low., Dec. 18.)

9. A bona fide purchase, for a commercial purpose, by a neutral, in his own home port, of a sloop of war of a belligerent that had taken refuge in such port, in order to escape from enemy vessels in pursuit, though she were in good faith, dismantled prior to the sale, and afterwards fitted up for the merchant service, does not exempt her from capture by the other belligerent. (*The Georgia*, 7 Wall., 32.)

10. The seizure of enemy's property on land, as prize of war, *jure belli*, is not authorized by the law of nations, and can only be upheld by a positive statute. (*United States v. Shares of Capital Stock of the Great Western Railroad Co.*, 5 Bl. C. C., 231.)

11. A capture made within the State of North Carolina, on the Roanoke River, 130 miles from its mouth, by a naval force detached from two steamers that had been compelled by the crookedness of the stream and apprehensions of low water to anchor at a distance of 30 to 50 miles below, is a capture upon "inland waters," and not therefore regarded as maritime prize. (*The Cotton Plant*, 10 Wall., 577.)

12. A joint capture by the army and navy is not prize of war, but inures exclusively to the benefit of the Government. (*The Siren*, 13 Wall., 389; s. c. 1 Low. Dec., 280.)

13. A vessel captured on the surrender of an enemy's city and harbor to the joint naval and military forces is not prize of war, which goes to the captors. (*The Siren*, 1 Low. Dec., 280.)

III. RIGHTS AND LIABILITIES OF THE CAPTORS.

14. A capture as prize of war, *jure belli*, overrides all prior liens. (*The Battle*, 6 Wall., 498.)

15. There can be no valid condemnation as prize of war, except to the Government; but the captor may use the name of the sovereign for the protection of his interests. (*Farragut v. The Metropolis*, 3 Am. L. T. Rep., 48.)

IV. EVIDENCE.

16. Courts of prize are not bound by common-law rules of evidence, nor even by those which prevail on the instance side of the admiralty. (*The Tulip*, Fish. Pr. Cas., 16.)

17. Evidence to acquit or condemn must come, in the first instance, from the papers and crew of the captured vessel; leave for further proof is only granted in cases of honest mistake or ignorance, or to clear doubts or remedy defects; and the application must be supported by evidence of probable cause and good faith. (*The Lilla*, 2 Cliff., 169; S. C. 2 Spr., 177.)

18. What is sufficient evidence, that a captured vessel is enemy's property. (*The Wren*, 6 Wall., 582.)

19. On appeal, a case will be heard on further proofs, though the record disclose no order therefor; it being evident, either that there was such order, or that the proofs were taken by consent. (*The Georgia*, 7 Wall., 32.)

V. PRACTICE.

20. If no witnesses be sent in with the prize, or produced for examination upon the standing interrogatories, the vessel and cargo will be delivered to the claimants, on giving security in the appraised value. (*The Ariadne*, Fish. Pr. Cas., 32.)

21. The master or agent may make claim; but it must be made in behalf of the proper party. (The *Lilla*, 2 Cliff., 169; S. C. 2 Spr., 177.)

22. Claims presented after the proofs have been opened and examined, and after hearing the reasons assigned for condemnation, are never favored. (Ibid.)

23. If a neutral claimant attempt to impose upon the court, by knowingly or fraudulently claiming property as his own, which belongs in part to an enemy, he will not be entitled to restitution of that portion which he may ultimately establish as his own. (Ibid.)

VI. DISTRIBUTION OF PRIZE MONEY.

24. It is not enough, to entitle a vessel to share in the distribution of a prize, that she was within signal distance, and formed part of the force commanded by the officer who made the capture, if her situation were such that she could not have rendered any assistance in the actual conflict. (The *Selma*, 1 Low. Dec., 30.)

25. Where the alleged joint captors were more than 5 miles off, they were held not to have been within signal distance. (The *R. E. Lee*, 1 Low. Dec., 36.)

NOTE.—During the late war certain quantities of broken cotton bales were picked up in the sea by United States blockading vessels, which had evidently been thrown overboard from some English blockade runner escaping from a Southern port, and which were uniformly sent into port to be sold for the benefit of the salvors. At first it was the practice for the United States marshal to libel this cotton, and upon the presentation of affidavits of officers as to the time, place, and circumstances attending the finding of the derelict, by the United States district attorney, the court (in the absence of counsel for the salvors as to their rights) signed decrees, declaring that the “*derelict broken cotton bales*” were of “*inferior force to the captors*” (a prerequisite under the law to such a decree), and decreed it therefore to be “*prize of war*,” and directed that one moiety of the proceeds of the sale of such cotton should be paid into the United States Treasury.

Subsequently the officers, being advised of the rulings of the court, employed counsel to protect their interests, and after full argument the court afterwards decided in other cases, on the same facts and circumstances, that such cotton was not prize of war, but was simply “*derelict*,” and that the salvors were entitled to the whole proceeds of the cotton sold, reference being made to the decision of Justice Betts, United States district court for the southern district of New York, in the cases of the *United States v. Forty Bales of Cotton*, *United States v. Thirty-four and one-half Bales of Cotton*, *United States v. One hundred and fifty Sacks and Fifteen Bundles Picked Out by the Gunboats Gettysburg, Quaker City, and Nippon*.

In consequence of these decisions the accounting officer of the Treasury distributed the whole proceeds to the salvors, as directed by the court, whereas prior thereto only one-half was paid to them and the other half covered into the Treasury.

DECISION OF SECOND COMPTROLLER.

The Second Comptroller of the Treasury Department decided as follows:

“Where seventy-eight bales of cotton were picked up at sea by the United States steamer *Vicksburg*, and the court (in Boston) decreed that one-half of the proceeds of the cotton should go to the salvors and the other half be paid into the United States Treasury, and subsequently one of the salvors applied for his proportion of the moiety paid into the Treasury, on the ground that the cotton was ‘*derelict*’ and belonged wholly to the salvors: *Held*, that under section 11 of the act of June 30, 1864 (13 Stat. L., 310), relative to the distribution of ransom money, salvage, etc., it was competent for the Secretary of the Navy to correct the mistake of the court, and to direct payment to the salvors of the moiety erroneously paid into the Treasury, provided it was carried to the credit of the appropriation subject to draft; but that if the money was covered in as ‘*miscellaneous receipts*,’ an act of Congress would be requisite to authorize the payment to the salvors.” (April 29, 1870, vol. 33, p. 108 Comptroller’s Decisions.)

ACT OF CONGRESS RELATING TO DERELICT PROPERTY.

[16 Stat. L., p. 380.]

JOINT RESOLUTION to enable the Secretary of the Treasury to collect wrecked and abandoned property, derelict claims, and dues belonging to the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized to make such contracts and provisions as he may deem most advantageous for the interests of the Government, for the preservation, sale, or collection of any property, or the proceeds thereof, which may have been wrecked, abandoned, or become derelict,

being within the jurisdiction of the United States, and which ought to come to the United States, or any moneys, dues, and other interests lately in the possession of or due to the so-called Confederate States, or their agents, and now belonging to the United States, which are now withheld or retained by any person, corporation, or municipality whatever, and which ought to have come into the possession and custody of, or been collected or received by, the United States; and in such contracts to allow such compensation to any person giving information thereof, or who shall actually preserve, collect, surrender, or pay over the same, as the Secretary of the Treasury may deem just and reasonable: *Provided*, That no cost or claim, of whatever name or nature, shall become chargeable to the United States in so obtaining, preserving, collecting, receiving, or making available property, debts, dues, or interests, which shall not be paid from such moneys as shall be realized and received from the property so collected, under each specific agreement.

Approved, June 21, 1870.

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